

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

APPEAL SUIT No.480 OF 2008

JUDGMENT:

Unsuccessful Plaintiff - Mr. Satyanarayana Prasad alias Inderraj Bhatnagar in Original Suit No.27 of 2003 on the file of the Senior Civil Judge at Siddipet is the appellant in the present regular Appeal Suit filed under Section 96 of the Code of Civil Procedure, 1908, challenging the judgment and decree, dated 31.12.2007, passed in O.S. No.27 of 2003.

2. The judgment and decree was passed by the learned Senior Civil Judge, Siddipet on 31.12.2007, dismissing the relief for partition of plaint 'A' schedule properties and allotment of 3/4th share to the plaintiff and for eviction of defendant Nos.1 to 5 from the allotted share of the plaintiff and also to evict defendant Nos.9 to 14 and 32 to 36 from the share allotted to him in 'B' Schedule Properties and to put him in possession thereof.

3. The appellant herein is the plaintiff in the aforesaid suit, while respondents are the defendants.

4. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the aforesaid suit before the Court below.

5. Heard Sri T.S. Anand, learned counsel for the appellant - plaintiff, and Sri Sharad Sanghi, learned counsel for respondent No.2 -

defendant No.2. The appellant has mentioned that respondent Nos.6 to 45 are not necessary parties. Respondent Nos.46 to 49 are legal representatives of deceased respondent No.1 brought on record during the pendency of the present appeal suit. Though, Sri Mohd. Osman Shaheed, learned counsel, made appearance for respondent Nos.1, 3 and 5, there was no representation for them.

6. Certain facts, which were pleaded by both parties before the Court below, are necessary to adjudicate upon the controversy.

i) The pedigree filed in the original suit would reflect that one Mohanlal had two sons viz., Venkat Rai and Venkat Kishan Rai. Venkat Rai had a daughter - Parameshwar Bai, who died on 13.05.1993, and he adopted Mr. Satyanarayana Prasad, who is the plaintiff, and a son - Mohanlal, who died issueless. Another son of Mohanlal viz., Venkat Kishan Rai, who was unmarried, died in the year 1963. Satyanarayana Prasad, who is adopted son of Venkat Rai, has natural sisters and brothers, who are defendant Nos.1 to 5 herein. The other defendants, who are tenants, are unconnected to the said family.

a) Earlier, original suit No.75 of 1994 on the file of the learned Senior Civil Judge, Medak District at Siddipet, was filed by Mrs. Reeta Bhatnagar - defendant No.5 in the present suit viz., O.S.27 of 2003, for partition of item Nos.1 and 2 properties into seven (7) equal

shares and allotment of one such share by metes and bounds. She filed the said suit against the plaintiff herein and defendant Nos.1 to 4 and another. Defendant No.1, who is plaintiff herein, resisted the suit claim, whereas defendant Nos.2 to 6, of course, consented for partition of the said properties.

b) Basing on the pleadings therein, the learned trial Court settled as many as fifteen (15) issues, amongst which, issue No.8 to the effect “whether the defendant No.1 is the adopted son of late Venkat Rai?” since relates to the present plaintiff, the learned trial Court having discussed elaborately, held that the plaintiff herein, who is defendant No.1 therein, was the adopted son of late Venkat Rai and, accordingly, held that issue in favour of the plaintiff herein. The said finding constitutes the basis for seeking 3/4th share in the present suit schedule properties and, therefore, the plaintiff herein instituted the present suit for the aforesaid reliefs. The suit in O.S. No.75 of 1994, ultimately, ended in dismissal, observing that the suit for general partition should include all properties belonging to the joint family. As per findings on issue No.14, certain properties were not included and no explanation as to why the said properties were not included in the suit was placed satisfactorily and since the suit was for partial partition, it is liable for dismissal though, plaintiff was entitled to 1/20th share in the suit schedule properties including the properties that were partitioned between defendant No.1 and Parameshwari Bai

as per written statement of defendant No.1 and properties in occupation of third parties - purchasers and protected tenants, and thereby held that the suit was liable for dismissal for partial partition as well as non-joinder of necessary parties and, therefore, dismissed the suit, by judgment, dated 06.04.1998. However, since finding recorded on issue No.8, as aforesaid, stood undisturbed, the learned counsel for the appellant - plaintiff would contend that the Court below ought to have given due regard to that finding holding that the plaintiff is entitled to 3/4th share in the properties.

c) A few more averments would become relevant in the present context. The plaintiff sets out a temporary arrangement, basing on which, he and defendant Nos.1 and 5 have been in possession and enjoyment of certain extents, but according to the plaintiff, there was no partition at all by metes and bounds, and that has been the reason, the present suit is filed. According to him, as per the tentative arrangement, 'B' schedule properties were allotted to him and he has been in possession thereof; 'C' Schedule Properties are under the possession of protected tenants and they are to be formally partitioned without disturbing the possession of the protected tenants, and some of the protected tenants without their knowledge and consent alienated certain extents to third parties, who are defendant Nos.9 to 14 and 32 to 36, which are shown in 'D' schedule properties which are in their

illegal occupation and located in Survey Nos.10, 222, 280 and 290 for six years next before the institution of the suit.

d) The plaintiff also would aver that in view of the vast properties, protected tenants and third parties' possession and pendency of 38-E Certificate and Ceiling Cases and also on account of differences amongst shareholders, the partition of all the properties could not be finalized and, as such, for convenient sake, as a temporary management irrespective of the shares of the parties, some lands were taken possession in the name of partial partition by him and the allotment and enjoyment of the said properties has been temporary pending final partition of all properties as per the shares. Thus, he comes out with a definite case that his possession over certain extents is under temporary arrangement and even he avers that certain properties were sold by him shown in 'B' schedule appended to the plaint, and equities may be taken into consideration in the final allotment regarding his share. So, he requests to divide 'A' schedule properties claiming 3/4th share being the adopted son of late Venkat Rai and for other consequential reliefs referred to in the above. The plaintiff has shown description of properties in Schedules 'A' to 'E', and in 'F' Schedule, he has given genealogical tree of Mohan Lal.

ii) Defendant Nos.1 and 2 filed their common written statement, refuting the allegations mentioned in the plaint. They would bring out certain new facts. They relate to institution of suits in

O.S. No.259 of 1974 and O.S. No.260 of 1974 by co-sharers. According to them, the properties shown in 'B' schedule annexed to the said two suits were allotted to the plaintiff herein and they are more in number and large in extent than what was shown in 'B' schedule annexed to the present plaint.

a) They also would strongly resist the claim on the ground that the plaintiff has suppressed the material facts as he did not disclose the events that transpired culminating into passing of decrees in O.S. Nos.259 and 260 of 1974, which decrees were, in fact, passed on the consent written statements filed by the defendants therein.

b) So far as the decree passed in O.S. No.75 of 1994 is concerned, no finding at all was given by the learned Senior Civil Judge except to the extent that the plaintiff herein is adopted son of late Venkat Rai and, therefore, the question of invoking the power of '*res judicata*' by the plaintiff does not arise. In fact, according to them, one of the sisters filed O.S. No.75 of 1994 for partition and the said suit was dismissed for non-inclusion of all the properties of the family. Incidentally, they refer to the proceedings pending before the Joint Collector, Medak District at Sanga Reddy in Case No.C3 - 40/83, where the plaintiff herein was the appellant No.1 and, in fact, he brought it to the notice of the appellate Court about the oral partition in the month of May, 1968, which was confirmed in O.S. Nos.259 and 260 of 1974. Thus, they refer to various proceedings

before the Revenue Authorities and suppression of certain facts by the plaintiff and alienations made by him in Survey No.285 ad-measuring Acs.3.20 guntas shown in 'B' schedule properties commenting that the plaintiff ought not to have sold 50% undivided share in 'B' Schedule properties in case he is pleading that there was no partition by metes and bounds. Finally, they sought to dismiss the suit even contending that the fixed Court Fee paid under Section 34 (2) of Andhra Pradesh Court Fees and Suit Valuation Act, 1956 is undervalued.

iii) Defendant No.3 filed a memo adopting the written statement of defendant Nos.1 and 2 and also defendant No.5.

iv) Defendant No.4 filed her separate written statement, expressing that she has no objection to divide the properties. The written statement consists of one and a quarter page with eight paragraphs, but no details, nor any specific averments have been made therein.

v) In the written statement filed by defendant No.5, she has elaborately once again reiterated what has been stated by defendant Nos.1 and 2, mostly answering each of the allegations mentioned in the plaint. There is no need to refer to the contents therein once again as the averments made by defendant Nos.1 and 2 in their written statement would suffice.

7. Basing on the aforesaid pleadings, the Court below settled the following seven (7) issues for trial:

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1. Whether the plaintiff is entitled partition of 'A' Schedule properties and allotment of 3/4th share?
2. Whether the plaintiff is in joint possession of schedule properties?
3. Whether there was any alleged oral partition by mutual consent in May, 1968 and B Schedule properties allotted to the plaintiff as contended by the defendants 1, 2 and 5?
4. Whether the defendants 9 to 14 and 32 to 35 are liable to be evicted of 'B' schedule land?
5. Whether the suit is having no jurisdiction to entertain the suit?
6. Whether the suit is not maintainable?
7. To what relief?”

8. During trial, to substantiate the case, the plaintiff examined himself as PW.1 and exhibited Exs.A-1 to A-4, whereas defendant No.1 examined himself as DW.1 and exhibited Exs.B-1 to B-10.

i) The plaintiff, in fact, marked the certified copies of judgment and decree in O.S.No.75 of 1994 as Exs.A-1 and A-2; certified copy of pahani for the year 1999-00 as Ex.A-3, certified copy of Certificate, dated 25.03.2003.

ii) The defendants marked the certified copy of deposition of DW.1 in O.S. No.75 of 1994 as Ex.B-1; certified copies of plaints in O.S. Nos.259 and 260 of 1974 marked as Exs.B-2 and B-5,

respectively; written statements are as Exs.B-3 and B-6, respectively; certified copies of decrees therein are as Exs.B-4 and B-7 respectively; certified copy of Order, dated 10.06.1986, passed by the Joint Collector as Ex.B-8; memo, dated 18.09.2007, issued by the Tahsildar, Jagdevpur as Ex.B-9 and Photostat copy of letter, dated 09.10.1992, from the Mandal Revenue Officer, Jagdevpur to the Revenue Divisional Officer, Siddipet as Ex.B-10.

9. The Court below taken up issue Nos.1 to 6 together for common discussion, perhaps, the oral and documentary evidence through PW.1 and DW.1 and Exs.A-1 to A-4 and Exs.B-1 to B-10 are related to each of the issues settled for trial. The Court below refers to the submission made by the learned counsel for the plaintiff therein that the plaintiff was the adopted son of late Venkat Rai and entitled to 3/4th share and also the submission that the parties engineered the suits in O.S. Nos.259 and 260 of 1974 only to protect their properties from the Land Reforms (Ceiling on Agricultural Holdings) Act, and that defendant Nos.9 to 14 and 32 to 36 are laible to be evicted from 'B' Schedule Properties. The Court below also refers to the submission of the learned counsel for defendant Nos.1 and 2 in regard to the partition by mutual consent held in 1968 and the present plaintiff as defendant No.1 in O.S. Nos.259 and 260 of 1974 admitted in his written statement as to the previous partition of 1968 by metes and bounds amongst the parties with mutual consent and the property

shown in 'B' Schedule annexed to the plaint therein having been allotted to the plaintiff herein and compromise decree passed basing on the family settlement and the plaintiff selling away some of the properties subsequently that had fallen to his share and basing on these circumstances, contended that the plaintiff is not permitted to question the previous partition, and even referred to the decisions in **Ramcharan Das v. Girija Nandini**¹. The Court below, in fact, extracted what has been held by the Hon'ble Supreme Court therein and also in **Harishankar Sanghanis V. Gaur Hari Sanghania**², **A.V. Papayya Sastri v. Government of A.P.**³, **Indian Bank v. Satyam Fribs (India) Ltd.**⁴, **Tirumala Tirupathi Devasthanams, rep.by Executive Officer, Tirupathi, Chittoor District v. Venkata Padmavathamma**⁵, **S.P. Chengalvaraya Naidu v. Jagannath**⁶ and then referred to the stand taken by the plaintiff in the context of the proceedings in O.S. Nos.259 and 260 of 1974, and disbelieved the said stand. Then appreciated the evidence on record, more particularly, PW.1's answers given in his cross-examination and non-impleadment of mother of the plaintiff, who was alive on the date of filing the suit and, finally, held that the plaintiff even suppressed the material facts i.e., proceedings in O.S. Nos.259 and 260 of 1974 and

¹. AIR 1966 SC 323

². AIR 2006 SC 2488

³. AIR 2007 SC 1546

⁴. 1996

⁵. 2007 (6) ALT 72 (DB)

⁶. (1994) 1 SCC 1

held that the plaintiff is not entitled to any of the reliefs, and thereby, dismissed the suit.

10. The learned counsel for the appellant - plaintiff would submit that the Court below has overlooked the fact that defendant Nos.1 and 2 did not even referred to the suits in O.S. Nos.259 and 260 of 1974 and O.S. No.75 of 1994 and it resulted tendering a wrong finding. His further submission is that the judgments and decrees in O.S. Nos.259 and 260 of 1974 were not acted upon for the reasons that there was no such oral partition in 1968 amongst the parties and the Court below misdirected itself in deciding the issues, and thereby the findings tendered are vitiated in law.

i) The learned counsel also would submit that the Court below, somehow, did not appreciate the documentary evidence through Exs.A-1 to A-4 in proper perspective. He would further submit that the Court below having held issue Nos.1 to 5 in favour of the plaintiff ought to have decreed the suit, more particularly, when 'A' schedule properties are not divided by metes and bounds amongst the parties and, therefore, his submission is that only to avoid the rigor of the provisions of Land Reforms (Ceiling on Agricultural Holdings) Act, the parties have resorted to filing of O.S. Nos.259 and 260 of 1974 and a tentative arrangement was made to get over the provisions of Land Reforms (Ceiling on Agricultural Holdings) Act, and there was no final partition amongst the parties by metes and bounds, which the

Court below did not at all look into, hence sought to set aside the judgment and decree and allow the suit decreeing the same for the reliefs claimed by the plaintiff.

11. Per contra, learned counsel for respondent No.2, Sri Sharad Sanghi, would submit that there is clinching evidence on record to prove that the family properties were partitioned in 1968 and the extents fallen towards shares of respective sharers have been under their occupation and possession, and even some of the extents were already sold by the plaintiff and, therefore, the Court below rightly dismissed the suit.

a) The learned counsel's submission is that there are as many as six (6) circumstances on record that would clinch the issue between the parties. The events that are mainly projected by the learned counsel are:

- (i) Written Statements filed by the plaintiff herein as defendant No.1 in O.S. Nos.259 and 260 of 1974 and the decrees passed therein, in which written statements, the plaintiff herein as defendant No.1 in an unequivocal terms mentioned the partition of 1968, basing on which alone, the decrees were passed in both suits filed by defendant Nos.1 and 2 respectively;

- (ii) The decrees passed therein were not challenged by the plaintiff and they attained finality. Therefore, the question of reopening the partition does not arise as the partition of 1968 was accepted and acted upon by the parties and recognized by the Courts in the said suits;
- (iii) Though, the plaintiff pleaded 'fraud' on the part of the contesting defendants in obtaining decrees in O.S. Nos.259 and 260 of 1974, the said plea is without any elaboration, nor there is any specific allegation thereto in the plaint. The said plea of 'fraud' is also not supported by any evidence at all either directly or by way of circumstances giving rise to inferences aiding the documentary evidence adduced on behalf of the plaintiff;
- (iv) The plaintiff being recognized as adoptive son of late Venkat Rai in O.S. No.75 of 1994 was even referred to in the earlier proceedings between the parties though, issue No.8 in the said suit was held in favour of the plaintiff, but the suit for partition filed by defendant No.5 herein - Reeta Bhatnagar ultimately was dismissed. She did not carry the matter to the Higher Courts questioning the same, and the judgments and decrees in O.S. Nos.259 and 260 of 1974 were not at all referred to in the plaint

and they were only brought out in the written statement filed by defendant Nos.1 and 2;

(v) The so-called temporary arrangement set up by the plaintiff cannot at all be accepted for the reason that there is no foundation laid to prove the temporary arrangement, and the plaintiff deliberately set up an incorrect plea in an attempt to get over the partition of 1968 and the effect of decrees in O.S. Nos.259 and 260 of 1974; and

(vi) The learned counsel would rely on the admissions made by the plaintiff in his cross-examination in the present suit, which according to the learned counsel, would clinchingly establish the previous partition of 1968 and the binding effect of decrees passed in O.S. Nos.259 and 260 of 1974.

b) The learned counsel also placed reliance in **S.P. Chengalvaraya Naidu**⁶, wherein the Hon'ble Apex Court explaining the meaning of 'fraud', held that the principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants, and the courts of law are meant for imparting justice between the parties, and one, who comes to the court, must come with clean hands, and the person, whose case is based on falsehood, has no right to approach the court, and he can be summarily thrown out at any stage of the litigation, and

a judgment or decree obtained by playing fraud on the court is a nullity and *non est* in the eyes of law, and such a judgment/decreed by the first court or by the highest court has to be treated as a nullity by every court, whether superior or inferior, and it can be challenged in any court even in collateral proceedings.

Concerning the 'burden of proof' on the part of the party, who pleads 'fraud', the Hon'ble Apex Court held that a litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

c) The learned counsel also placed reliance on a catena of decisions of Hon'ble Supreme Court in the context of admissions made in the pleadings. These authorities have been relied on in the context of admissions made by the plaintiff as defendant No.1 in O.S. Nos.259 and 260 of 1974. In **Basant Singh v. Janki Singh**⁷, the Hon'ble Apex Court held that the admission made by a party in a plaint signed and verified by him may be used as evidence against him in other suits, and such admission cannot be regarded as conclusive, and the party can show it as not true. Thus, to rebut the presumption, burden lies on the plaintiff in the present case to prove that under such

⁷. AIR 1967 SC 341

and such compelling circumstances and basing on consensus among all the co-sharers or co-owners, he made such admissions in the written statements filed in O.S. Nos.259 and 260 of 1974.

d) In **Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi**⁸, the Hon'ble Apex Court has explained the value of admission expressing that an admission is the best evidence that an opposing party can rely upon, and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous.

e) In **Avadh Kishore Dass v. Ram Gopal**⁹, the Hon'ble Supreme Court in the context of 'admission' and shifting burden of proof that evidentiary admissions are not conclusive proof of the facts admitted and may be explained or shown to be wrong, but they do raise an estoppel and to shift the burden of proof on to the person making them or his representative-in-interest, and unless shown or explained to be wrong, they are an efficacious proof of the facts admitted. The learned counsel, therefore, would urge that the admissions made by the plaintiff in his cross-examination in the present suit and the admissions in his written statements filed in O.S. Nos.259 and 260 of 1974 are all sufficient to prove the factum of prior partition of 1968 and the plaintiff and defendant Nos.1 to 5 acting upon the said partition, besides alienations made by the plaintiff of the properties fallen to his share in regard to which positive admissions

⁸. AIR 1960 SC 100

⁹. AIR 1979 SC 861

have been made by the plaintiff. Therefore, he urges to dismiss the appeal supporting the findings recorded by the Court below and the conclusion arrived at in dismissing the suit, rejecting the reliefs.

12. On the anvil of the submissions made by the learned counsel for the appellant and the respondents and the rulings relied on, now it is to be seen whether the finding recorded on issue No.8 in O.S. 75 of 1994 would really assist the plaintiff in seeking 3/4th share in the schedule properties as claimed by him, and whether it would have any effect in erasing the earlier admissions made by him when he filed written statements in O.S. Nos.259 and 260 of 1974 and also the admissions made as PW.1 in the present suit?

Point No.1

13. Initially, it would be appropriate to refer to the written statements filed by him as defendant No.1 in O.S. Nos.259 and 260 of 1974. The suit in O.S. No.259 of 1974 was filed by defendant No.1 herein requesting to declare the entries in the revenue records (pahanies) for the years 1968 to 1974 of the lands of plaint schedules 'A' regarding ownership, occupancy and possessory rights as incorrect and false, and for rectification of the same in favour of the plaintiff. Like-wise, O.S. No.260 of 1974 was filed by defendant No.2 herein seeking the very same relief. In both the suits, the plaintiff herein is figuring as defendant No.1. He filed written statements in both the suits. In paragraph No.2, he specifically admits

that the parties effected partition of all the properties that were jointly owned and possessed by them by metes and bounds and orally with mutual consent in the month of May, 1968. It would be appropriate to extract what has been got mentioned in the written statement in paragraph Nos.2 to 4 and the answer to the prayer in the suit. It reads thus:

“2. Contents of paras 3 and 4 of the plaint are admitted as correct in toto. It is true that the parties effected partition of all the properties that were jointly owned and possessed by them by metes and bounds and orally with mutual consent in the month of May 1968. The defendants admit that the plaintiff got the plaint “A” Schedule properties to his share in the said partition and the defendants got the properties to their respective shares as shown in the plaint “B” schedule. It is also true that the parties have been in exclusive possession and enjoyment of the properties allotted to them in the said partition since it was effected upto this date.

3. With regard to para 5 of the plaint the defendants submit that though the parties intimated to the Patwari regarding the factum of partition and separate possession and enjoyment of the parties in pursuance thereof, he is still continuing the entries in the pahanias writing the names of the first and second defendants as previously in respect of the plaint “A” schedule lands. As such the entries made by the patwari in the Pahanis for the years 1968 to 1974 are wrong and incorrect; and the defendants have no objection for rectification thereof in favour of the plaintiff.

4. Paras 6 to 10 of the plaint are formal and legal and the same need no reply.

It is prayed that the suit of the plaintiff may be decreed without costs.”

The aforesaid written statement is marked as Ex.B-3. Identical written statement is filed in O.S. No.260 of 1974, which is marked as Ex.B-6. When the plaintiff herein does not whisper in his plaint about these suits and written statements filed by him, he cannot come up with the plea of 'fraud'. Thus, there is suppression of material facts, which have got direct bearing on the controversy in the present case in regard to the reliefs claimed by the plaintiff. In which case, certainly, the plaintiff disentitles for the relief. Therefore, the admissions made by him in the pleadings i.e., in both the written statements would bind him and he cannot wriggle himself out of the binding nature of the admissions by just coming out that the said written statements were filed by him in view of the consensus arrived at by the parties only with a view to get over the rigor of Land Ceiling Act which is neither pleaded, nor explained in the plaint averments, nor there is anything in the evidence let in by him to prove such an alleged understanding or arrangement between the parties, more particularly, the temporary arrangement which he avers in the plaint.

Point Nos.2 and 3

14. The decrees passed in O.S. Nos.259 and 260 of 1974, certainly, cannot be erased from record so long as they remain on record for the reason they attained finality as no challenge is made by the plaintiff herein by way of filing an independent suit challenging or questioning the said decrees attributing 'fraud' on the part of the

plaintiff therein or preferred appeal. In such event, certainly, it cannot be said that the partition of 1968 was not accepted nor acted upon as contended by the plaintiff.

Point No.4

15. Incidentally, the consequence is that, though, the plaintiff is recognized as adoptive son of late Venkat Rai as per the finding recorded in O.S. No.75 of 1994, still, certainly, it cannot be said that, that finding would set the judgments and decrees passed in O.S. No.259 and 260 of 1974 at naught. Therefore, this point is also held in favour of the respondents and against the appellant.

Point No.5

16. The plea of arrangement set up by the plaintiff is not supported by any evidence on record except that a mere finding recorded in his favour to the effect that he is the adoptive son of late Venkat Rai. In the direction of so-called temporary arrangement, except a plea in the plaint, no positive evidence is let in by the plaintiff to hold that he is successful in proving the temporary arrangement. Therefore, this point is also held against the appellant.

17. In his evidence as PW.1, he would give certain positive admissions when he was cross-examined by the learned counsel. He admits that he was shown as defendant No.1 in O.S. Nos.259 and 260 of 1974 and he filed written statements in the said suit consenting to

decree the suit and the decrees were also passed on 30.12.1974. He gives a positive admission thus:

“It is true that the parties effected partition of all the properties that were jointly owned and possessed by them by metes and bounds and orally with mutual consent in the month of May, 1968.”

This strikes at the root of the case of the plaintiff. In regard to the tentative arrangement, he also gives a positive admission that he has not stated in earlier suits about any tentative arrangements as stated in his chief examination. Concerning the alienation of certain properties, he would answer that his mother sold some lands and he has subscribed his signatures in some documents without receiving any consideration. *Ex facie*, this answer would expose the falsity in making such a statement, when there is nothing on record to show that he was not aware of the alienations, more particularly, when in his plaint, he specifically mentions that he had sold away ‘B’ schedule properties.

18. Thus, viewed from any angle, these admissions made by him in his cross-examination coupled with the admissions made by him in his written statements filed by him in O.S. Nos.259 and 260 of 1974, would completely condemn the case set out by him seeking partition of the properties which were already divided. Thus, the factum of previous partition relied on by the contesting defendants is proved and, therefore, the plaintiff is not entitled to the ruling of

partition of the plaint schedule properties once again and the relief sought for by him cannot be granted.

19. When examined the analysis in arriving at the findings by the Court below, the findings recorded are based on appreciation of evidence and supported by process of reasoning in accordance with evidentiary rule. The said findings do not suffer from any legal infirmity warranting interference.

20. Therefore, finding that there is no merit in the present appeal, the appeal is dismissed confirming the judgment and decree, dated 31.12.2007, passed by the learned Senior Civil Judge, Medak District at Siddipet in O.S. No.27 of 2003. In the circumstances of the case, the parties are directed to bear their own costs.

As a sequel thereto, miscellaneous applications, if any, pending in the present appeal, stand closed.

A. SHANKAR NARAYANA, J

March 13, 2018.

Mgr